

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #9	CCRB Case #: 201701267	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 02/10/2017 10:00 PM	Location of Incident: § 87(2)(b) [REDACTED]	Precinct: 47	18 Mo. SOL 8/10/2018	EO SOL 8/10/2018	
Date/Time CV Reported	CV Reported At: IAB	How CV Reported: Social Media	Date/Time Received at CCRB Fri, 02/17/2017 11:53 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Robert Durst	03362	946684	047 PCT
2. POM Yoryi Santana	21761	959968	047 PCT
3. POM Nicholas Jusino	24245	953913	047 PCT
4. POM Manuel Paulino	25148	947824	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Taralena Gerrato	16783	957534	047 PCT
2. POF Gloria Cevallos	17457	958390	047 PCT
3. POM Rafael Vasquez	11488	958145	047 PCT
4. POM Stanley Baez	15980	957351	047 PCT
5. LT Anand Bhoj	00000	915053	047 PCT
6. POM Emmanuel Deleon	30828	952654	047 PCT
7. POM Nestor Allende	05539	960586	047 PCT
8. POM Brian Hanlon	05831	950459	047 PCT
9. SGT Victor Genao	04018	930207	047 PCT
10. POM Michael Coiro	11622	955828	047 PCT
11. POM Rafael Rispoli	12456	956201	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
12. POM Mark Fleming	24493	941763	047 PCT
13. POM Anton Gjeloši	08079	957628	047 PCT
14. POM Reuben Antwi	25102	948300	047 PCT
15. POF Laura Varisco	08985	920929	047 PCT
16. SGT Douglas Soriano	02672	949682	047 PCT
17. POM Gelvis Loraespinal	27485	948238	047 PCT
18. POM Matthew Escudero	26192	948333	047 PCT
19. POM Ryan Jones	05095	956781	047 PCT
20. CPT Jeremy Scheublin	00000	929457	047 PCT
21. POM Justin Venezia	12130	956316	047 PCT
22. POM Lennin Badia	19794	958281	047 PCT
23. POM Joshua Valdez	15354	947565	047 PCT
24. POM Nicolas Dominguez	27087	948202	047 PCT
25. POM Darryn Thompson	07443	957214	047 PCT
26. POM Seville Legrand	09305	957447	047 PCT
27. POF Laura Carcamo	31770	954602	047 PCT
28. POM Lanser Montilla	05568	953132	047 PCT
29. POM Alex Chen	22641	954635	047 PCT
30. POM Fatmir Vucetovic	559	955644	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Robert Durst	Force: Sergeant Robert Durst used a Taser against § 87(2)(b)	
B.POM Nicholas Jusino	Abuse: Police Officer Nicholas Jusino interfered with § 87(2)(b)'s use of a recording device.	
C.POM Yoryi Santana	Abuse: Police Officer Yoryi Santana interfered with § 87(2)(b)'s use of a recording device.	
D.POM Nicholas Jusino	Abuse: Police Officer Nicholas Jusino interfered with § 87(2)(b)'s use of a recording device.	
E.POM Yoryi Santana	Abuse: Police Officer Yoryi Santana interfered with § 87(2)(b)'s use of a recording device.	
F.POM Nicholas Jusino	Abuse: Police Officer Nicholas Jusino interfered with § 87(2)(b)'s use of a recording device.	
G.POM Yoryi Santana	Abuse: Police Officer Yoryi Santana interfered with § 87(2)(b)'s use of a recording device.	
	§ 87(2)(g), § 87(4-b)	

2033Case Summary

On February 10, 2017, at approximately 10:00 p.m. PO Taralena Gerrato and PO Gloria Cevallos, both of the 47th Precinct, responded to a call of an infant who had trouble breathing on the § 87(2)(b) floor of § 87(2)(b) in the Bronx. While they were addressing that call with EMT § 87(2)(b) EMT § 87(2)(b) EMT § 87(2)(b) and EMT § 87(2)(b) PO Gerrato and PO Cevallos were called to the fourth floor by a resident of the building, who stated that there were people fighting there.

When PO Gerrato and PO Cevallos arrived on the § 87(2)(b) floor of the building, they saw at least two male individuals engaged in a dispute on the floor. Also present on the floor were § 87(2)(b) and her sister § 87(2)(b) PO Gerrato called for an additional unit to assist with the situation on the fourth floor. Over 30 additional officers arrived, including PO Nestor Allende, PO Manuel Paulino, PO Michael Coiro, PO Brian Hanlon, PO Yoryi Santana and Sgt. Robert Durst, all of the 47th Precinct.

Sgt. Durst discussed what occurred with PO Gerrato. PO Gerrato told him that § 87(2)(b) had attacked her, and Sgt. Durst made the decision at that point to place her under arrest. He moved in to place § 87(2)(b) in handcuffs, as did his partner PO Hanlon, PO Allende, PO Coiro, and PO Paulino. When they did so, § 87(2)(b) stated several times that she was pregnant.

Approximately 25 seconds after initiating physical contact with § 87(2)(b) Sgt. Durst discharged a Taser once into her side (**Allegation A: Force- Substantiated**). As § 87(2)(b) was being taken into custody, her neighbors § 87(2)(b) and § 87(2)(b) were allegedly recording the incident on their cell phones. Neighbor § 87(2)(b) was also present.

Shortly after the Taser was discharged into § 87(2)(b)'s side, Lt. Anand Bhoj and PO Nicholas Jusino, both of the 47th Precinct, arrived on scene. PO Jusino and PO Santana then shined their flashlights into § 87(2)(b)'s cell phone, interfering with the recording (**Allegations B and C: Abuse of Authority-** § 87(2)(g) and allegedly shined their flashlights into § 87(2)(b)'s and § 87(2)(b)'s recording cellphones (**Allegations D, E, F, and G: Abuse of Authority-** § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

On February 14, 2017, the video taken by § 87(2)(b) (Board Review 1) was posted to § 87(2)(b) which sparked media coverage in local, national, and international media. § 87(2)(b) also provided this video to IAB, which sent this complaint to the CCRB under IAB Log number 2017-06464.

§ 87(2)(g)

§ 87(2)(b) was arrested for resisting arrest, obstructing governmental administration, and disorderly conduct. On April 28, 2018, the § 87(2)(b) reported that her charges had been dropped (Board Review 2). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Findings and Recommendations

Allegation (A) Force: Sgt. Robert Durst used a Taser against § 87(2)(b)

It is undisputed that after briefly speaking with § 87(2)(b) in the hallway outside of her apartment, Sgt. Durst made the decision to place § 87(2)(b) under arrest. It is undisputed that he, PO Hanlon, PO Coiro, PO Allende, and PO Paulino also approached § 87(2)(b) to assist in placing her under arrest. It is undisputed that after they did so, Sgt. Durst discharged a Taser once into her side. It is undisputed that within one minute of the Taser's being used, § 87(2)(b) was handcuffed.

§ 87(2)(b) herself did not cooperate with the investigation. She told the Internal Affairs Bureau that she was pregnant at the time of the incident. § 87(2)(b) the only civilian witness to provide a verified statement, did not remember § 87(2)(b) moving her body or resisting arrest as officers were trying to put on handcuffs. He believed, however, that they were telling her to put her hands behind her back. He did not remember how many officers were trying to handcuff her (Board Review 5). § 87(2)(b) in an unverified phone statement, did not hear officers telling § 87(2)(b) to do anything before trying to handcuff her. She remembered that § 87(2)(b) was offering physical resistance with her arms and upper body, but she could not clearly describe that resistance. She denied that § 87(2)(b) kicked any officer (Board Review 6). Both § 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) told the officers that she was pregnant after officers grabbed her arms, but before the Taser was discharged. They also stated that one handcuff was placed on § 87(2)(b)'s wrist before the Taser was discharged.

Sgt. Durst did not deny that he placed one handcuff on § 87(2)(b)'s wrist before he used the Taser against her. He stated that he tried handcuffing § 87(2)(b) for approximately 30 seconds before using the Taser. In that time, § 87(2)(b) was swinging her arms and kicking. He stated that he believed that she kicked him once in the leg, but that he did not incur any injuries. He also stated that she was swinging her arms, but he could not provide any additional details, such as how many times she did so, or whether she was directing her arms at any particular officers. Sgt. Durst did not remember losing his grip on § 87(2)(b). He was telling her to stop resisting, though he did not remember telling her initially that she was being placed under arrest (Board Review 7).

He cited § 87(2)(b)'s physical resistance as a reason for using the Taser. The only other reason he gave was the presence of a "hostile" crowd that he believed could outnumber him if he did not expediently handcuff § 87(2)(b). He stated that there were several civilians in front of him as he was trying to handcuff § 87(2)(b) and at least ten officers present. When asked about his prior experiences with criminality in the building, Sgt. Durst said only that he had issued summonses for drugs, but could not remember which drugs (Board Review 7).

PO Hanlon, Sgt. Durst's partner, also assisted in placing § 87(2)(b) into custody. He stated that § 87(2)(b) kicked Sgt. Durst, and similarly described her resistance as pulling her

arms away from officers and kicking, though he could not remember where she landed her kick. He held onto the arm that Sgt. Durst was not holding onto. He also stated that he did not lose his grip on her at any point, that he did not use any force aside from holding onto her arms, and that he did not remember any other officers using different force. He only described seeing one civilian recording at the time, though he could hear more (Board Review 8).

PO Coiro, who helped Sgt. Durst place § 87(2)(b) into custody, similarly characterized § 87(2)(b)'s physical resistance as pushing and pulling her arms away from the other officers, though he did not see her try to kick any officer. He only tried to hold her arms to handcuff them behind her back. PO Coiro described seeing one female individual and one male individual besides § 87(2)(b) on scene. He described at least 10 officers as being in the hallway when she was being taken into custody (Board Review 9).

PO Allende, who was also attempting to restrain § 87(2)(b) physically, also stated that her physical resistance amounted to pulling her arms away from officers. He did not see her kick any officers. He did not remember losing his grip on her, and he did not remember any civilians other than § 87(2)(b) being present before the Taser was used (Board Review 10).

Besides the officers who have already been mentioned, only one other officer made physical contact with § 87(2)(b) after Sgt. Durst decided to place her under arrest, but before the Taser was used. This officer was PO Paulino, PO Allende's partner. PO Paulino described § 87(2)(b)'s physical resistance as kicking—though perhaps not striking any officer—physically recoiling, and pulling her arms away. PO Paulino placed his hand on § 87(2)(b)'s shoulder for several seconds. He then let go, because there were so many other officers, at least three, taking her into custody at the time (Board Review 11).

None of the officers interviewed stated that they heard § 87(2)(b) tell the officers that she was pregnant before she was placed under arrest. They did not remember any other individuals saying that she was pregnant. None of them believed, based on her physical appearance, that she was pregnant at the time. No officer testified that § 87(2)(b) ever broke free of any officer's grip while the officers were taking her into custody (Board Reviews 7, 8, 9, 10, 11, 12, 13).

Though the EMTs interviewed for this case did not see § 87(2)(b) being taken into custody, all four except for Lt. Bhoj saw her before she was handcuffed. None of the other four believed, upon first seeing her, that she was visibly pregnant (Board Reviews 14, 15, 16, 17, and 18). Lt. Bhoj believed that she was heavily pregnant, but he was informed of as much before he arrived on scene (Board Review 18).

The TRI prepared for this incident, prepared by Sgt. Durst, and verified by Lt. Bhoj's signature, indicated that § 87(2)(b) stood 5'4" tall and weighed 140 pounds at the time of the incident. It also stated that she used foot strikes against officers, and that she was "pushing/shoving" and "wrestling/grappling" before the Taser was used on her. The same document indicated that Sgt. Durst is § 87(2)(b) (Board Review 19).

Surveillance footage from § 87(2)(b) in the Bronx showed § 87(2)(b) pulling against Sgt. Durst, PO Hanlon, and PO Coiro before Sgt. Durst discharged a Taser. She did so for between 25 and 30 seconds. The video shows at least one other civilian present, and many officers, over 10, in the immediate vicinity, and over 20 in the hallway where she was (Board Reviews 20 and 21).



2018-05-11_16-43-07.mp4

The video taken by § 87(2)(b) seen below, shows § 87(2)(b) pulling her arms against Sgt. Durst and the other officers taking her into custody (Board Reviews 1 and 22). She stated that she was pregnant several times before the Taser was used against her.



§ 87(2)(b).mp4

The iteration of Patrol Guide Procedure 221-08 in effect during February 2017 allowed the reasonable use of a conducted electrical weapon against actively resisting suspects. The same procedure provides a list of factors to consider in relation to whether force is reasonable, that includes the severity of the crime, actions taken by the subject, duration of said action, active evasion of custody, number of subjects in comparison to officers, the size and age of the subject, the subject's violent history, and the presence of a hostile crowd. This procedure also prohibits the use of a conducted electrical weapon on an obviously pregnant female individual (Board Review 23).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Nicholas Jusino interfered with § 87(2)(b)'s use of a recording device.

Allegation (C) Abuse of Authority: Police Officer Yoryi Santana interfered with § 87(2)(b)'s use of a recording device.

Allegation (D) Abuse of Authority: Police Officer Nicholas Jusino interfered with § 87(2)(b)'s use of a recording device.

Allegation (E) Abuse of Authority: Police Officer Yoryi Santana interfered with § 87(2)(b)'s use of a recording device.

Allegation (F) Abuse of Authority: Police Officer Nicholas Jusino interfered with § 87(2)(b)'s use of a recording device.

Allegation (G) Abuse of Authority: Police Officer Yoryi Santana interfered with § 87(2)(b)'s use of a recording device.

It is undisputed that as Sgt. Durst discharged the Taser on § 87(2)(b)'s next-door neighbor § 87(2)(b) took video from his door frame. After the Taser was discharged, PO Jusino, and then PO Santana shined a flashlight directly into his cellphone camera.

In an interview with IAB, § 87(2)(b) provided video that he took of the incident (Board Reviews 1 and 25). This video is consistent with the video shown on § 87(2)(b) and on § 87(2)(b)



1487124042558_img_0002.mov

§ 87(2)(b) stated that he, § 87(2)(b) and § 87(2)(b) were taking video with their cellphones directly in front of their apartment, Apt. § 87(2)(b). He stated that officers were shining their flashlights into each of the cellphone cameras. He declined to provide any

footage, and said only that it had been posted on a § 87(2)(b) page of another individual whom he refused to name (Board Review 5).

Neither § 87(2)(b) nor § 87(2)(b) participated with the CCRB investigation despite numerous contact attempts and two trips to § 87(2)(b). No civilian ever directly provided the CCRB with any video footage or attributed any footage taken to themselves.

A search of § 87(2)(b) yielded a second video of the incident posted to the § 87(2)(b) page of an individual listed as § 87(2)(b) (Board Reviews 26 and 27). The audio of this video aligns with the audio of the video that § 87(2)(b) took. The entirety of this video appears below:



201701267_20170223_1045_DM.mp4

Both civilian-recorded videos show officers shining flashlights into the cameras. The surveillance video from § 87(2)(b) shows that the officers who shined flashlights into Apt. § 87(2)(b) were PO Jusino and PO Santana. It also shows PO Jusino initially shining his flashlight into the security camera on the fourth floor of § 87(2)(b).



§ 87(2)(b).mp4

Both videos also show that PO Cevallos and PO Hanlon were positioned closer to the door frame of Apt. § 87(2)(b) than either PO Jusino or PO Santana. PO Hanlon ordered § 87(2)(b) to move back when he was recording (Board Reviews 27 and 28). None of the videos shows any deficiencies in the lighting conditions.

Both PO Santana and PO Jusino confirmed that they shined flashlights in the direction of Apt. § 87(2)(b) (Board Reviews 29 and 30). PO Santana stated that there were two male individuals, one partially obstructed by the other, approaching the officers in the hallway from their apartment. The male individual in front was recording the incident. The male individual in back was standing with his hand raised. PO Santana believed that there was an object in this hand, but he could not describe it in any way. He could not identify any features about the object that would indicate that it was anything other than a cellphone and a camera. He could not identify any other factors that marked out either individual as a threat (Board Review 29).

PO Jusino stated that he shined his flashlight inside of Apt. § 87(2)(b) in order to better see the individuals moving in and out of the doorframe of the apartment. He was not able to tell the lighting conditions in the apartment. He was not alerted to any threats in the apartment by any other officer. He confirmed that there was a male individual with a cellphone at the door frame, but stated that he was shining his flashlight in the direction of the apartment. He denied—even after being shown surveillance video of himself several feet from § 87(2)(b) after she was handcuffed—seeing anyone in police custody. He denied seeing any female individuals interacting with police officers (Board Review 30).

PO Hanlon, who video showed was standing very close to the residents of Apt. § 87(2)(b) closer than were PO Jusino and PO Santana—and facing them, stated that he told the residents to move back. He did not remember any officer shining a flashlight at them, and he could identify any reasons why an officer would have needed to (Board Review 8). PO Cevallos was similarly

- § 87(2)(b) [REDACTED]

- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (Board Review 35).
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (Board Review 36).
- Sgt. Durst has been a member of service for nine years, and has been a subject in one prior and one subsequent CCRB complaint. He has been the subject of one prior and three subsequent allegations. None of these allegations has been substantiated. § 87(2)(b) [REDACTED]
- PO Jusino has been a member of service for five years, and this is the first complaint to which he has been a subject (Board Review 38).
- PO Santana has been a member of service for two years, and this is the first complaint to which he has been a subject (Board Review 39).

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- On February 23, 2017, § 87(2)(b) [REDACTED]'s civil attorney, Scott Rynecki, filed a notice of claim with the New York City Office of the Comptroller on § 87(2)(b) [REDACTED]'s and her mother, § 87(2)(b) [REDACTED], seeking \$5.5 million in redress. § 87(2)(a) Gen. Mun. § 50-h(3), § 87(2)(b) [REDACTED]
- According to the Office of Court Administration, § 87(2)(b) [REDACTED] has no history of convictions in New York City (Board Review 3).
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]

- § 87(2)(b) [Redacted]
[Redacted]
- § 87(2)(b) [Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad #9

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date